Supreme Court said: "We find in some instances the expression of a decided opinion upon the facts, but in no case was there an interference with the province of the jury. We have said in repeated instances that it is not error for a judge to express his opinion upon the facts if done fairly; nay, more, that it may be his duty to do so in some cases, provided he does not give a binding direction or interfere with the power of the jury." And in a murder case, *Commonwealth v. Van Horn,* 188 Pa. 164, the same court said: "That a trial judge should abstain from comments on the testimony in such a case as this could not possibly be expected. It would be a violation of his plain duty if he did."

This bill is an illustration of the way in which courts are rendered ineffective in administering justice by unwise statutory interference with details of pleading and practice. It is to be sincerely hoped that the bill will fail of passage and that the Pennsylvania courts will not be obliged to recede from the position they have taken as to the functions of the judge in trials. E. L.

THE MELBER TRIAL AND THE DEFENSE OF INSANITY.

The recent trial of Mrs. Melber at Albany, N. Y., for the murder of her only child by the administration of carbolic acid calls attention again to the subject of insanity as a defense in criminal trials. An attempt was made to prove the defendant insane, although the evidence offered for that purpose, according to the press accounts of the trial, was very slight. The jury returned a verdict of murder in the second degree and it is stated that the jurors subsequently said that they had agreed upon that verdict, not because they were free from all doubt as to the insanity of the defendant, but because it would not keep her from the insane asylum if she be really demented, but would operate to prevent her confinement in such an institution with the chances of a discharge later on insanity proceedings.

A committee of the New York Bar Association has recommended a change in the law as to insanity as a defense to crime which is formulated as follows:

"If upon the trial of any person accused of any offense it appears to the jury upon the evidence that such person did the act charged, but was at the time insane, so as not to be responsible for his actions, the jury shall return a special verdict, 'guilty, but insane,' and thereupon the court shall sentence such person to confinement in a state asylum for the criminal insane for such term as he would have had to serve in prison, but for the finding of insanity; and if upon the expiration of

such term it shall appear to the court that such person is still insane, his confinement in such asylum shall continue during his insanity; and, further, when such a verdict of 'guilty, but insane,' is returned in a case where the penalty for the verdict of guilty against a sane person is death, such sentence for the insane person thus found guilty shall be for life; and in all such cases the Governor shall have the power to pardon, after such inquiry as he may see fit to institute upon the question whether it will be safe to the public to allow such person to go at large."

There would seem to be obvious and conclusive objection to this proposal. It recognizes that the defendant proved to be insane is not responsible for his act, but requires a finding of guilt, which is, of course, an affirmation that the person *was* responsible. It also requires the imposition of the punishment of imprisonment for the same term as a sane person would have to serve, the only difference being that the place of confinement is an asylum instead of a prison. It would be more consistent to say that he should be imprisoned the same as a sane person, if he is to be punished at all. The purpose of an asylum is restraint and treatment, not punishment. If the insane criminal has really responded to treatment and recovered, what sort of logic or common sense is it that would keep him, perhaps for years afterward, shut up in an asylum? Of course, the real trouble is the suspicion that the criminal was not insane in the first place, but that assumes that the verdict was wrong, and the problem to be met is, then, the securing of correct results in trials, not the punishment of the insane. The obvious way of meeting that problem would seem to be a stricter application of the rules of evidence in criminal trials. No evidence should be admitted that has not an apparent probative value on the subject under investigation. There are rules of evidence to this effect and they should be strictly enforced. Of course, it sometimes happens that, where the mental state of the defendant is involved in the issue, as in questions of intent, deliberation and premeditation, which bear upon the degree of the crime, evidence is admissible which would not properly tend to show insanity. In such cases, however, it should be limited to its legitimate purpose. The question of expert testimony and its proper regulation is also of importance here. Of course, no person acquitted of crime on the ground of insanity should be allowed to go at large, but should be committed to an insane hospital for so long as he continues insane. This is, however, provided for by existing law, although, perhaps, some improvement in such provisions is possible. To hold an insane person, however, responsible for his crimes when he is

not held responsible for his torts, his contracts or any other actions, is an inconsistency that the law should not be guilty of. The result of the Melber trial would seem to indicate that juries can be trusted to scrutinize carefully the defense of insanity. E. L.

LEGAL PROCEDURE AND LEGISLATION.

There is much criticism of the procedure of our courts nowadays, both in and out of the legal profession. It is alleged that too many cases are decided on technical questions relating to procedure, instead of on the merits of the case, and the complaint is often made that this is due to the legal profession clinging to old forms which are outworn and which should be simplified in accordance with the practical demands of the time. This complaint, however, overlooks the fact that for many years the legislatures of our several states have been regulating legal procedure until there remains at the present time very little of the old common law forms to which are attributed the evils of delay and over-technicality. The common law rules, while in many instances over-refined and technical, nevertheless formed a logical and related system based on general principles and with a well-defined aim. The reform of common law pleading, unfortunately, did not stop at simplification and the removal of over-technicality, but substituted arbitrary rules in endless detail, based on no principle whatever. A long course of judicial construction was the necessary consequence; but, to make matters worse, the legislatures have continued to pass "practice acts" at every session changing the rules relating to some branch of procedure. It is obvious that with this continual change going on numerous questions in regard to procedure inevitably arise. It is to this continual legislative tinkering with the details of procedure that over-technicality is due where it exists at present, rather than to any vestiges of the refinements of common law pleading. It is a hopeful sign that this is beginning to be recognized. In his presidential address at the last annual meeting of the New York State Bar Association Senator Elihu Root said:

"The original Field Code of Procedure of 1848 contained 391 sections and was comprised in 169 of the small, loosely printed pages of the session laws of that time. The last edition of our present code at which I have looked contains 3,384 sections, a large proportion of them dealing with the most minute details. It is doubtless true that some provisions of substantive law have found their way into this enormous mass of statutory matter and that some special branches of procedure are covered by the present code which were not included in the original